

FAIR HOUSING LITIGATION SEMINAR FOR FHAP AND FHIP COUNSEL

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Julian & Associates, S.C.

Thinking Creatively When Investigating & Preparing Cases

How The Best Trial Lawyers Work and Think

- Guided by the jury research.
- Create the compelling story needed to win.
- Supported by a viable theory of the case.
- Know what relief is possible.
- Create a litigation team.

Designing The Investigative Plan

- Creativity and knowledge of human nature are important components of the plan.
- You can't get the information you need to win by sitting in your office using mailed questionnaires or the telephone.
- Get off your duff and go into the field!

The Investigative Plan -- The 5 W's of the Story

- Who's involved?
- What happened?
- When?
- Where?
- WHY? (Motive)

The I - Injury

- The Crucial Question: What is the Injury?
- What's the Cause of the Injury?
- How Is it CAUSED BY the WHY?
- What Relief Does Injury Justify?

Liability

- Compelling Facts
- Cause - MOTIVE
- Law Violation
- Injury

Relief

- What does the injury justify?
- Damages and Injunctive Relief?
- Special Crafted Relief?
 - License suspension or revocation?
 - E.g. *Henry v. Webermeier*

Choice of Forum

- May be different depending on the case.
- Know your objectives and your judge.
- Does the precedent treat landowners as “special”?
- What relief will the forum likely award?
- What are the prospects for appeal?

So Few Trials – So Much Summary Judgment

- Summary Judgment is the new reality!
- You will need to construct your case from the outset to withstand summary judgment or partial summary judgment.
- Use Summary Judgment yourself!
 - With issues of law.
 - When it won't hurt your damage claims.
 - To narrow or simplify the issues.

Information – Your Most Precious Resource

- Use the legal authority of the state and locality in the investigation.
- Testing is not the only way to get information as to availability and ownership.
- Obtain service records: utility, telephone, gas, water, electricity, etc. for availability, ownership and damages information.

Discovery

- Do it early in the litigation.
- File your interrogatories with the complaint.
- Use requests for admission early.
- Use video depositions. Some people are not very good on camera! Juries like video!
- Administrative procedures are a cost effective means of record building.

Uncovering Other Evidence

- Smoking Gun Evidence
- Found On Site
- Conversations With Defendant's:
 - Employees
 - Current & Former Residents
- Documents
- Testing Evidence

Begin to Build Four Analysis Documents

- Cast of Characters
- Chronology of Facts
- Issue List
- Question List

Build A Cast of Characters

- Uses for a Cast of Characters.
- Cast should involve critical items.
- Define the Cast broadly.
- Designate the type of thing each player is.
- Tests for inclusion
 - The first day back test.
 - The critical facts test.

What to Include in a Cast of Characters

- Persons & Organizations
- Key Documents & Physical Evidence
- Key Events
- Unknown persons
- Include Harmful Characters
- Avoid Elaborate Descriptions
- Evaluation Column

Hill v Hopkins 2-9-04 - Cast of
Characters Report Web
Page.htm

Build A Chronology of Key Facts

- All Facts & Dates
- Explicit Details
- Out of Your Mind & into Teapots or on Paper
- Fact Sources
- Disputed & Prospective Facts

Hill v Hopkins 2-9-04 - Fact Report Web Page.htm

Build An Issue List

- Include Factual & Legal Claims
- Name & Detailed Description
- Include Language of Jury Instruction
- Relationship Between Each:
 - Fact
 - Witness
 - Documents

Hill v Hopkins 2-9-04 - Issue Report Web Page.htm

Build A Question List

- Get them into the Notes areas of Teapots as well as on Paper.
- This is your “To Do” list.
- Rate the importance to the case of the answer and note a due date.
- Assign responsibility for getting the answer.

Hill v Hopkins 2-9-04 -
Question Report Web
Page.htm

Using What You've Created

- In EVERY Meeting
- To Build or Enhance A Case Theory
- To See How / If Case Makes Sense
- To create, respond to and prepare for discovery.
- To Produce reports, timeline visuals, and test hypotheses.

Investigative Reports

- Final Investigative Reports do not improve with age! Key witnesses may need to be re-interviewed.
- Does the report meet professional standards? Is it written simply and clearly? Can you sell the report?

Working With Investigators

- The investigator is a litigation team member, not just someone to be called in occasionally or in a panic!
- Regular communication is a must!
- He / She must be prepared for his or her deposition. Aside from the charging party's it will be the most important deposition.

Using Your Cast of Characters

- Examine Who's (What's) Missing
- Improve description of key players?
- Who is most important to the case?
- Who is most problematic?

Using Your Chronology

- Are the dates complete?
- Are there other fact sources?
- Are important facts missing?
- Are there bad facts I don't know?
- Organize witness testimony at trial.
- Sort your facts by issue to evaluate strengths and weaknesses.

Using Your Issue List

- Understand what's at the heart of the case
- Identify overlooked issues
- Identify other facts, witnesses or documents not reflected in the Cast of Characters or Chronology

Using Your Question List

- Determine areas that need attention early
- Establish a priority timeline
- Have a list of questions for interviews of witnesses or for depositions
- Add additional questions you may not have thought of initially
- Determine responsibility for getting answers to the questions

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Finally

- Be Systematic
- Use Teapots Database Software
- Keep Colleagues In The Loop

Theories of Liability

- Disparate Treatment
- Adverse Impact
- Perpetuation of Segregation
- State Law Claims
- RICO
- Select the Right Theory for Your Facts

Theories of Liability – Disparate Treatment

- Victim Treated Differently Than Others Not In Victim's Protected Class
- Proof Paradigm
 - *Texas Dept. of Community Affairs v. Burdine*,
450 U.S. 248 (1981)
- All About MOTIVE
- Mixed Motive Cases

Theories of Liability – Proof of Disparate Treatment

- Membership In a Protected Class
- He / She Is Qualified
- Others Got What Victim Sought
- Victim Excluded / Injured by Treatment
- Going Forward Burden Shifts

Theories of Liability – Proof of Disparate Treatment

- Defendant Must Articulate a Legitimate Non-discriminatory Reason for Actions
- The Burden of Going Forward Shifts Back to the Plaintiff

Theories of Liability – Proof of Disparate Treatment

- Plaintiff Must Prove Alleged Motive Is A Pretext for Discrimination
- Show Reasons Alleged Are False
- Use Testing Evidence
- Smoking Gun Evidence
- Link To Discrimination

Theories of Liability – Adverse Impact

- Neutral Practice Which Impacts Victim More Harshly Than Others Not in the Victim's Protected Class
- No Prohibited Intent

Theories of Liability – Proof of Adverse Impact

- Statistical Evidence Showing Significant Adverse Impact on Victim's Class
- Issue: Do Challenged Practices Serve Significant Legitimate Housing Goals of Defendant?
- Proof That Defendant's Interests Can Be Met By Less Restrictive Alternatives

Return to Your Lists

- Update Your Issues As Your Theory Evolves
 - [Hill v Hopkins 2-9-04 - Issue Report Web Page.htm](#)
- Add to Your Cast of Characters
 - [Hill v Hopkins 2-9-04 - Cast of Characters Report Web Page.htm](#)
- Add to your Chronology of Facts
 - [Hill v Hopkins 2-9-04 - Fact Report Web Page.htm](#)

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Questions?

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